

1 Hon. John H. Chun
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

9 Mr. Kurt A. Benshoof, A.R.W. By and Through
10 His Father, Mr. Kurt A. Benshoof, Brett
Fountain, Urve Maggitti,

11 No. 2:24-CV-00808-JHC
12 Plaintiffs,
vs.

**CITY OF SEATTLE'S REPLY TO
PLAINTIFF'S RESPONSE TO ORDER
TO SHOW CAUSE AND OBJECTION
TO PROOFS OF SERVICE**

13 ANDREA CHIN, ANTHONY BELGARD,
14 DONOVAN BROUSSARD, NATHAN
CLIBER, CATHERINE CORNWALL,
15 GREGG CURTIS, JANE DOE, JENNY
DURKAN, JOHN DUUS, NICHOLAS
EVANS, PASCAL HERZER, RYAN ELLIS,
16 MICHAEL FOX, TYLER GOSLIN, JULIE
KLINE, ERNEST JENSEN, JONATHAN
17 KIEHN, SPENCER KURZ, MAGALIE
LERMAN, RICHARD LIMA, ADAM
18 LOSLEBEN, YVES LUC, SARAH
MACDONALD, JACOB MASTERSOHN,
19 GRANT MAYER, STEVEN MITCHELL,
JOHNATHAN MUSSEAU, BREHON NESS,
20 LILIYA NESTERUK, STEPHEN
OKRUHLICA, KATRINA OUTLAND,
JESSICA OWEN, SARAH PENDLETON,
21 DWAYNE PIRAK, BRIAN REES, BLAIR
RUSS, JULIE SALLE, DANIEL SCHILLING,
TY SELFRIDGE, NATHAN SHOPAY,
22 STEVEN STONE, MICHAEL TRACY,
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2:24-CV-00808-JHC

Ann Davison
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(206) 684-8200

1 MELANIE TRATNIK, SARAH TURNER,
 2 TREVOR TYLER, MICHAEL VIRGILIO,
 3 ANDREW WEST, CHAD ZENTNER, In Their
 Individual Capacities, CITY OF SEATTLE,
 KING COUNTY,

4 Defendants.

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 6 Comes now Defendant City of Seattle (“City”), by special appearance to contest service,
 7 without waiving any objections to jurisdiction and files this Reply to Plaintiff’s Response to Order to
 8 Show Cause and Objection to Proofs of service. In support thereof the City states as follows:

9 **ARGUMENT AND CITATION TO AUTHORITY**

10 The Complaint is properly dismissed for failure to comply with the requirements of Federal
 11 Rules of Civil Procedure Rule 4. The Plaintiffs’ Response to the Order to Show Cause (Dkt. 120) has
 12 not raised any new allegations of good cause not already found insufficient by this Court in ruling on
 13 the Plaintiff’s Motion for Extension of Time to Serve Defendants. (Dkts. 114, 118). Further, the
 14 Proofs of Service do not reflect actual service as the Plaintiff failed to meet the requirements of Rule
 15 4, namely the Summons failed to bear the Court Seal and failed to include the signature of the Court
 16 Clerk. (*See Ex. A, Declaration of Attorney Dallas LePierre (“LePierre Decl.”)*)

17 **I. The Plaintiffs Failed to Show Good Cause for Failing to Serve the City Defendants.**

18 The Plaintiffs raised the same issues regarding the confinement of Plaintiff Benshoof as good
 19 cause for failure to comply with FRCP Rule 4. As this Court has already held, this is not sufficient to
 20 excuse compliance by the Plaintiff with that Rule. (*See* Dkts. 114, 118.) The only new issue is that
 21 Plaintiffs allege to have made attempts to serve the City Defendants in the 11th hour after this Court
 22 denied both Motions for Extension of Time. *Id.* This effort, particularly as there was no effort to serve
 23 in accordance with the FRCP Rule 4 as demonstrated below, does not constitute good cause or

1 excusable neglect. The First Amendment Complaint should be dismissed.¹

2 **II. Plaintiffs' Attempt at Service Failed to Comply with Federal Rules Of Civil
3 Procedure Rule 4.**

4 Rule 4 requires that a plaintiff serve each defendant with a summons and copy of the
5 complaint in the case. Fed. R. Civ. P. 4. Rule 4 also lays out how a plaintiff gets a summons issued,
6 which must be signed and sealed by the Clerk. Fed. R. Civ. P. 4(b). Rule 4 requires that the summons
7 be signed by the clerk and bear the Court's seal. *Id.* While minor or technical defects in a summons
8 are not typically grounds for dismissal, "failure to use a signed and sealed summons, as Plaintiffs did
9 here, represents a "flagrant disregard" for the requirements of Rule 4(a)-(b) and is grounds for
10 dismissal. *Clancy v. Allstate Ins. Co.*, No. 20-CV-08668-BLF, 2021 WL 3861421, at *3 (N.D. Cal.
11 Aug. 30, 2021). This issue is jurisdictional. For this Court to obtain personal jurisdiction over a
12 defendant, that defendant must be served a valid, properly signed, summons and complaint. *Silbaugh*
13 *v. Chao*, 942 F.3d 911, 915 (9th Cir. 2019).

14 Plaintiffs allege that service of the First Amended Complaint has been completed on City
15 Defendants Andrea Chin, Jenny Durkin, John Duus, Nicholas Evans, Ryan Ellis, Johnathan Kiehn,
16 Spencer Kurz, Richard Lima, Adam Losleben, Yves Luc, Sarah Macdonald, Jacob Masterson,
17 Johnathan Musseau, Brehon Ness, Stephen Okrulica, Katrina Outland, Dwayne Pirak, Daniel
18 Schilling, Ty Selfridge, Nathan Shopay, Malanie Tratnik, Chad Zetnick, and the City of Seattle
19 (collectively "City Defendants"). Plaintiffs Urve Maggitti and Bret Fountain have never sought to
20 have properly signed and sealed Summons issued by this Court. As shown by the Plaintiffs' own
21

22 ¹ While dismissal for failure to comply with Rule 4 is without prejudice, any new complaint filed
23 would be subject to the standing Vexatious Litigant Order against Plaintiff Kurt Benshoof entered in
case number 2:23-cv-1392-JNW (W.D. Wash., Feb. 11, 2025).

1 exhibits, and the exhibits to this Reply, the Plaintiffs have not served a single City Defendant with a
2 valid, signed and sealed Summons and Complaint. (LePierre Dec., Ex. A) Each City Defendant listed
3 by Plaintiff as served was *not* served a signed and sealed Summons and Complaint. *Id.* The failure of
4 the Plaintiffs to serve the City Defendants as required by Rule 4 is further evidenced in Plaintiffs'
5 own Response filing — each Proof of Service that is included in their Response as exhibits that have
6 copies of the summons, plainly shows that the Summons used to allegedly "serve" City Defendants
7 were unsigned and unsealed. (Dkt. 125-1, pp. 110-11, 123-24, 153-54, 156-57.) Having "flagrantly
8 disregard[ed]" the requirements of FRCP Rule 4, the Court should dismiss the First Amended
9 Complaint. *Clancy*, 2021 WL 3861421, at *3; *Silbaugh*, 942 F.3d at 915. As a result of the Vexatious
10 Litigant Order entered against Plaintiff Benshoof (*see* FN.1, *supra*), Plaintiffs must refile their
11 Complaint in Compliance with that order.

12 **CONCLUSION**

13 The Plaintiffs have failed to comply with the requirements of FRCP Rule 4 and have failed to show
14 good cause therefore. As of the date of this filing, no City Defendant has been properly served in
15 accordance with the requirements of FRCP Rule 4, and the time to do so has passed. The Court should
16 enter an Order dismissing the First Amended Complaint.

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1 **CERTIFICATE OF COMPLIANCE**

2 I certify that this Reply to Plaintiff's Response to Order to Show Cause and Objection to
3 Proofs of Service contains 829 words in compliance with the Local Civil Rules.

4 DATED this 23rd day of May, 2025.

5 ANN DAVISON
6 Seattle City Attorney

7 By: /s/ Dallas LePierre
8 Dallas LePierre, WSBA# 47391
9 Carson W. Canonie, WSBA# 62464
10 Assistant City Attorney
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13 Seattle City Attorney's Office
14 701 Fifth Avenue, Suite 2050
15 Seattle, WA 98104
16 Phone: (206) 684-8200

17 *Attorney for Defendant City of Seattle*

CERTIFICATE OF SERVICE

I certify that on the 23rd day of May, 2025, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

| | |
|--|---|
| <p>Kurt Alden Benshoof, DOC #448305 Washington Corrections Center (WCC) PO Box 900 Shelton, WA 98584</p> <p><i>[Pro Se Plaintiff]</i></p> | <p>(X) U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: kurtbenshoof@gmail.com; kurtbenshoof1@gmail.com DOCWCCInmateFederal@DOC1.WA.GOV</p> |
| <p>Brett Fountain 2100 West Northwest Highway 114 #1115 Grapevine, TX 76051-7808</p> <p><i>[Pro Se Plaintiff]</i></p> | <p>(X) U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: kb407@exposelegalcorruption.com</p> |
| <p>Urvé Maggitti 244 Blackburn Drive Berwyn, PA 19312 917-340-0561</p> <p><i>[Pro Se Plaintiff]</i></p> | <p>() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: urve.maggitti@gmail.com</p> |
| <p>Matthew Coughlan Darren Anthony Feider Monica Ghosh SEBRIS BUSTO JAMES 15375 SE 30TH Pl, Ste 310 Bellevue, WA 98007 425-450-3382</p> <p><i>[Attorney for Fox, Goslin, Mitchell]</i></p> | <p>() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: mcoughlan@sbj.law</p> |
| <p>Arick S. Bonsztyk 1000 Second Avenue, Suite 3660 Seattle, WA 98104 206-621-1871</p> <p><i>[Jessica Owen]</i></p> | <p>() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: asb@tbr-law.com</p> |

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| | |
|--|--|
| <p>Peggy C. Wu KING COUNTY PROSECUTING ATTORNEY'S OFFICE 701 Fifth Avenue, Suite 600 Seattle, WA 98104 206-263-4008</p> | <p>() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: pwu@kingcounty.gov</p> |
| <p><i>[King County, Catherine Cornwall, and Pascal Herzer]</i></p> | |
| <p>Howard Brown 1003 West Michigan Street Hammon, LA 70401</p> | <p>() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email:</p> |
| <p><i>[Pro Se Interested Party]</i></p> | |

/s/ Grace Selsor
Grace Selsor, Legal Assistant

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